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Title 154 - STATE FIRE MARSHAL

Chapter 1 - SCOPE AND DEFINITIONS

001. These Regulations shall apply to the manufacture, ownership, possession, storage, sale or gift, transportation, handling, and use of explosives and blasting agents.

002. These Regulations shall not apply to:

002.01. Explosives materials while being transported in conformity with Federal Law or Regulations, nor except as may be otherwise provided in this Act, to the ownership, possession, storage, use, transportation, purchase, or sale of explosive materials by the Armed Forces of the United States, the National Guard, other reserve components of the Armed Forces of the United States, and the duly constituted police and firefighting forces of the United States and of the State and its political subdivisions in the lawful discharge of their official duties.

002.02. Common, Contract, and Private carriers transporting explosive materials in the lawful, ordinary course of business. Common carriers by air, highway, railway, or water transporting explosive materials into this State or within the boundaries of this State, and contract or private carriers by motor vehicle transporting explosive materials into this State or within the boundaries of this State, and which contract or private carriers are engaged in such business pursuant to certificate or permit by whatever name issued to them by any Federal or State officer, agency, bureau, commission or department and operating within the Regulations prescribed by such Federal or State officer, agency, bureau, commission, or department shall be excepted. All transportation of explosive materials subject to the effects of these Regulations shall be in conformity with such safety regulations as contained in these Regulations.

002.03. The use of explosive materials in medicines and medicinal agents in forms prescribed by the official United States Pharmacopoeia, or the National Formulary.

APPROVED
Date 4-1-85

APR 1 1985
Allen J. Beerman
Secretary of State
Governor

APPROVED
ROBERT M. SPIRE
ATTORNEY GENERAL
BY Jay Bentes
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DATE 3-11-85

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002.04. The sale, transportation, shipment, receipt, or importation of explosive materials for delivery to any agency of the United States or to any state or political subdivision thereof.

002.05. Small arms ammunition and components thereof.

002.06. The storage or possession of or dealing in black powder used for recreation purposes by sportsmen.

002.07. The storage or possession of or dealing in smokeless propellants, percussion caps, primers, and other components used by sportsmen in the reloading of small arms ammunition.

002.08. Bona fide war trophies capable of exploding and innocently found explosive materials possessed under circumstances negating an intent to use the same unlawfully, but the owner thereof shall surrender such items forthwith to any law enforcement officer or agency upon demand.

002.09. The storage in minimum amounts necessary for lawful educational purposes of explosive materials to be used in the natural science laboratories of any state accredited school system.

003. Definitions.

003.01. "Person" shall mean any individual, firm, co-partnership, corporation, association, joint stock association, and including any trustee, receivee, assignee or personal representative thereof.

003.02. "Business Enterprise" shall mean any corporation, partnership, company, or joint stock company.

003.03. "Explosive Materials" shall mean explosives, blasting agents, and detonators.

003.04. "Explosives" shall mean any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion, including but not limited to dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord, and igniters, but shall not include permissible fireworks as defined in Section 28-1241, gasoline, kerosene, naphtha, turpentine, benzine, acetone, ethyl ether, benzol, fixed ammunition and primers for small arms, safety fuses, or matches.

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003.05. "Detonator" shall mean any device containing a detonating charge that is used for initiating detonation in an explosive, including but not limited to electric blasting caps of instantaneous and delay types, blasting caps for use with safety fuses and detonating cord delay connectors.

003.06. "Destructive devices" shall mean:

003.06A. Any explosive, incendiary, or poison gas, bomb, grenade, rocket having a propellant charge of more than four ounces, missile having an explosive or incendiary charge of more than one-quarter ounce, mine, booby trap, molotov cocktail, or any similar device, the primary or common purpose of which is to explode and to be used as a weapon against any person or property; or

003.06B. Any combination of parts either designed or intended for use in converting any device into a destructive device as defined in Section 003.06A and from which a destructive device may be readily assembled. The term destructive device shall not include any device which is neither designed nor redesigned for use as a weapon to be used against persons or property; any device, although originally designed for use as a weapon, which is redesigned for use as signaling, pyrotechnic, line throwing, safety, or similar device; surplus ordinance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of Section 4684 (2), 4685, or 4686 of Title 10 of the United States Code; or any other device which the State Fire Marshal finds is not likely to be used as a weapon or is an antique; or any other device possessed under circumstances negating an intent that the device be used as a weapon against any person or property.

003.07. "Federal Permittee" shall mean any lawful user of explosive material who has obtained a federal user permit under the provisions of Chapter 40, Title 18, United States Code.

003.08. "Federal Licensee" shall mean any importer, manufacturer, or dealer in explosive materials who has obtained a federal importers, manufacturers or dealers license under the provisions of Chapter 40, Title 18, United States Code.

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003.09. "Smokeless Propellants" shall mean solid propellants commonly called smokeless powders in the trade and used in small arms ammunition.

The State Fire Marshal shall have the power to grant exemption from these rules and regulations upon request in writing so to do when such request shows that the enforcement of the rules and regulations will cause unnecessary hardship to the petitioner, provided that said request shall not be granted where the requested modification of these rules and regulations will constitute a distinct hazard to life or adjoining property. Such petition shall state full particulars of such exemptions requested and when granted shall be attached to the notification of approval. Copies of the request shall be retained by the State Fire Marshal.

003.10. "Blasting Agent" shall mean any material or mixture, consisting of a fuel and oxidizer, intended for blasting, not otherwise, classified as an explosive and in which none of the ingredients are classified as an explosive, provided that the finished product, as mixed and packaged for use or shipment, cannot be detonated by means of a No. 8 test blasting cap when unconfined.

003.10A. Note 1: A No. 8 test blasting cap is one containing 2 grams of a mixture of 80% mercury fulminate and 20% potassium chlorate, or a cap of equivalent strength.

003.10B. Note 2: Nitro-Carbo-Nitrate. This term applies to any blasting agent which has been classified as nitro-carbo-nitrate under the Department of Transportation (DOT) Regulations, and which is packaged and shipped in compliance with the regulations of DOT.

003.11. "Explosive-Actuated Power Devices" shall mean any tool or special mechanized device which is actuated by explosives, but not to include propellant-actuated power devices. Examples of explosive-actuated power devices are jet tappers and jet perforators.

003.11A. Note 1: Classification of explosives is described by the Department of Transportation (DOT) as follows:

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003.11A1. "Class A Explosives". Possessing, detonating or otherwise maximum hazard; such as dynamite, nitroglycerin, picric acid, lead azide, fulminate of mercury, black powder, blasting caps, and detonating primers.

003.11A2. "Class B Explosives". Possessing flammable hazard, such as propellant explosives (including some smokeless propellants), photographic flash powders, and some special fireworks.

003.11A3. "Class C Explosives". Includes certain types of manufactured articles which contain Class A or Class B explosives, or both, as components but in restricted quantities.

003.11A4. "Forbidden or Not Acceptable Explosives" shall mean explosives which are forbidden or not acceptable for transportation by common carriers by rail freight, rail express, highway, or water in accordance with the regulations of the DOT.

003.11B. Note 2: Certain chemicals and certain fuel materials may have explosive characteristics which are not specifically classified by the DOT and are not readily classified for coverage in the Code. Authoritative information should be obtained for such unclassified materials and action commensurate with their hazards, location, isolation and safeguards, should be taken.

003.12. "Highway" shall mean any public street, public alley or public road.

003.13. "Inhabited Buildings" shall mean a building or structure regularly used in whole or part as a place of human habitation. The term "inhabited building" shall also mean any church, school, store, railway passenger station, airport terminal for passengers, and any other building or structure where people are accustomed to congregate or assemble, but excluding any building or structure occupied in connection with the manufacture, transportation, storage and use of explosives.

003.14. "Magazine" shall mean any building or structure, other than an explosives manufacturing building, approved for the storage of explosives.

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003.15. "Motor Vehicle" shall mean any self-propelled vehicle, truck, tractor, semi-trailer, or truck-full trailers used for the transportation of freight over public highways.

003.16. "Propellant-Actuated Power Devices" shall mean any tool or special mechanized device or gas generator system which is actuated by a smokeless propellant or which releases and directs work through a smokeless propellant charge.

003.17. "Public Conveyance" shall mean any railroad car, street, car, ferry, cab, bus, airplane or other vehicle which is carrying passengers for hire.

003.18. "Railway" shall mean any steam, electric, diesel or other railroad or railway which carries passengers for hire on the particular line or branch in the vicinity where explosives are stored or where explosives are stored or where explosives manufacturing buildings are situated.

003.19. "Singular and Plural" words used in the singular number shall include the plural and in the plural the singular.

003.20. "Small Arms Ammunition" shall mean any shotgun, rifle, pistol or revolver cartridge, and cartridge for propellant-actuated power devices and industrial guns. Military-type ammunition containing explosive bursting charges, spotting or pyrotechnic projectiles is excluded from this definition.

003.21. "Small Arms Ammunition Primers" shall mean small percussion-sensitive explosive charges, encased in a cup, used to ignite propellant powder.

003.22. "Smokeless Propellants" are solid propellants, commonly called smokeless powders in the trade, used in small arms ammunition, cannon, rockets, propellant-actuated power devices, and other similar propellants.

003.23. "Special Industrial Explosives Devices" shall mean explosive-actuated power devices and propellant-actuated power devices.

003.24. "Special Industrial Explosives Materials" shall mean shaped materials and sheet forms and various other extrusions, pellets and packages of high explosives, which include dynamite, TNT, PETN, RDX, and other similar compounds used for high-energy-rate forming, expanding and shaping in metal fabrication, and for dismemberment and quick reduction of scrap metal.

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003.25. "User" is a person who has qualified under the application, questionnaires, demonstration of being user certified or its equivalent and tests given by the State Fire Marshal, after receiving a test score of 80% or better on the test, to possess a permit to use explosives in blasting operations. Further, a user in the context of these regulations is only one who is in possession of a valid permit so issued by the State Fire Marshal.

003.26. "Factory Building" shall mean any building or other structure (except magazines) containing explosives, in which the manufacture of explosives, or any processing involving explosives is carried on, and any building where explosives are used as a component part or ingredient in the manufacture of any article or device. This definition does not include private residences or shop buildings where the handloading of small arms ammunition is being carried on.

003.27. "Authorized, Approved, or Approval". The term "authorized", "approved", or "approval" shall mean authorized, approved, or approval by the State Fire Marshal.

003.28. "State Fire Marshal" shall mean the State of Nebraska State Fire Marshal, or Assistant Fire Marshal, Chief Deputy Fire Marshal, or Deputy State Fire Marshal.

003.29. "Operator" means the person, firm, or body corporate in immediate possession and control of any operation where explosives are used or handled.

003.30. "Authority Having Jurisdiction" shall mean the State Fire Marshal or his/her assistants and Deputy Fire Marshals.

003.31. "Magazine Distance" shall mean the minimum distance permitted between any two storage magazines which is expected to prevent a propagation of an explosion from one magazine to another from blasts.

004. Permit - Application. Application for a permit shall be made to the State Fire Marshal on forms prescribed and provided by the State Fire Marshal and shall contain such information as the State Fire Marshal may require.

005. Permits and Permit Fees. Permits shall be obtained from the State Fire Marshal at his/her office for the following:

005.01. Permits to Store Explosive Materials. This permit authorizes the holder thereof, whether the holder be an individual, a partnership, a company, a corporation, or any

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other business enterprise, to store explosive materials in the amounts and types designated by the permit. Such storage must be in conformity with the rules and regulations for storage promulgated by the State Fire Marshal.

005.02. A Permit for the Purchase of Explosive Materials by a Business Enterprise. This permit authorizes a business enterprise (whether it be a corporation, partnership, association, or a company) which is in possession of a storage permit to purchase such explosive materials as it is authorized to store. The permit to purchase explosives which is possessed by a business enterprise which is not in possession of a storage permit authorizes such permittee to purchase explosive materials for such blasting operations as may legitimately occur to that business enterprise; provided, however, that the explosives purchased must be detonated on the same day as purchased and provided further, that upon any purchase of the explosives, the business enterprise have at least one employee possessing a valid use permit issued under this section.

005.03. A Permit to Use Explosive Materials. This permit is issued to those individuals who, by their training and special understanding in the use of explosives and the detonation thereof demonstrate to the State Fire Marshal that they are competent to handle such explosive materials, detonate them, and do, in fact, have a legitimate requirement to be engaged in such activities.

005.04. Applicants to pay the State Fire Marshal the fees prescribed, if person qualifies for any of the permits as follows and as provided in Section 28-1232 Neb. Rev. Stat. (1979).

005.04A. Storage of Explosives Materials. Fee - \$50.00 each per year.

005.04B. Use of Explosive Materials. Fee - \$10.00 each per year.

005.04C. Purchase of Explosive Materials by a Business Enterprise. Fee - \$10.00 each per year.

005.05. The correct fee must accompany the application for a permit to the State Fire Marshal, Lincoln, Nebraska. A check or money order for the fee shall be made payable to the Nebraska State Fire Marshal.

005.06. Permits issued under these regulations shall be dated and numbered and will be valid for dates, calendar year, or two-year period as provided in Section 28-1229 Neb. Rev. Stat. (1979), after date of issue, unless sooner

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revoked or suspended. Application for renewal of permits shall be made to the State Fire Marshal on or before November 1, prior to the renewal date of said permit to avoid possible lapse of said permit.

005.07. Where application for an explosives permit is made in the name of a corporation or company, the application shall also include the name of the person who will be responsible for compliance with the provisions of Sections 28-1213 to 28-1239 Neb. Rev. Stat. (1979), and any Regulations promulgated thereunder by the State Fire Marshal.

006. Permit Restrictions.

006.01. No explosive or blasting agent shall be sold, given, or delivered to any person who does not display a valid permit issued by the State Fire Marshal authorizing the storage or use of such explosive materials, or in the case of a business enterprise, a permit to purchase such explosive materials or a federal license or a permit.

006.02. No permit shall be assigned or in any way transferred.

006.03. No permit holder shall manufacture, sell, store, transport, or use explosives or blasting agents except in compliance with the regulations promulgated by the State Fire Marshal and as per provisions of Sections 28-1213 to 28-1239 Neb. Rev. Stat. (1979).

006.04. No person shall have any explosives or blasting agents in his or her possession or control without a permit required by Section 28-1229 Neb. Rev. Stat. (1979) except for authorized exceptions.

006.05. The State Fire Marshal shall not issue a permit to store or use, explosive materials to any person who:

006.05A. Is under nineteen years of age;

006.05B. Has been convicted in any court of a felony;

006.05C. Is charged with a felony;

006.05D. Is a fugitive from justice;

006.05E. Is an unlawful user of any depressant, stimulant, or narcotic drug;

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006.05F. Has been admitted as a patient or inmate in a public or private institution for the treatment of mental or emotional disease or disorder within five (5) years preceding the date of application; or

006.05G. Has no reasonable, educational, industrial, commercial, agricultural, recreational, or other legitimate need for a permit to store or use explosive materials.

007. Posting of, Carrying of, and Presentation of Permits.

007.01. Permits to Store. A permit to store shall be posted at each storage site.

007.02. Permit to Use. A person possessing a permit to use explosives shall have that permit on his or her person at any time he or she is engaged in or directing any blasting operation.

007.03. Permit to Purchase by a Business Enterprise. A permit to purchase explosives by a business enterprise shall be kept under lock and key at the business headquarters of the permittee. The permit shall be presented to any dealer or any other person from whom explosives are to be purchased. The actual purchase shall be made by an officer or other person having control of the affairs of the business enterprise or by the licensed user employed by the business enterprise. After the purchase the permit shall be returned to the business enterprise files and kept under lock and key.

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